

Michael C. Manning (#016255)
Larry J. Wulkan (#021404)
Stefan M. Palys (#024752)
STINSON LEONARD STREET LLP
1850 North Central Avenue, Suite 2100
Phoenix, Arizona 85004-4584
Tel: (602) 279-1600
Fax: (602) 240-6925
Email: michael.manning@stinsonleonard.com
larry.wulkan@stinsonleonard.com
stefan.palys@stinsonleonard.com
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Ernest Joseph Atencio, surviving father of Ernest Marty Atencio, individually and on behalf of the following statutory beneficiaries of Ernest Marty Atencio: Rosemary Atencio, surviving mother of Ernest Marty Atencio; Joshua Atencio, surviving son of Ernest Marty Atencio; Joseph Atencio, surviving son of Ernest Marty Atencio; M.A., a minor and surviving son of Ernest Marty Atencio; and Michael Atencio, Personal Representative of the Estate of Ernest Marty Atencio; and Rosemary Atencio, individually; Joshua Atencio, individually; Joseph Atencio, individually; and M.A., through his Next Friend, Eric Atencio,

No. 2:12-cv-02376-PHX-PGR

**PLAINTIFFS' STATEMENT OF
FACTS APPLICABLE TO ALL
DEFENDANTS**

Plaintiffs,

V.

Sheriff Joseph Arpaio and Ava Arpaio, husband and wife; Maricopa County, a public entity; Jaime Carrasco and Olivia Carrasco, husband and wife; Adrian Dominguez and Samantha Dominguez, husband and wife; Christopher Foster and Michelle Foster, husband and wife; Anthony Hatton and Jaclyn Hatton, husband and wife; Craig Kaiser and Karen Kaiser, husband and wife; Anthony Scheffner and Rhealea Scheffner, husband and wife; Jose Vazquez and Alma Vazquez, husband and wife; Jason Weiers and Melissa Weiers, husband and wife; Ian Cramner, an unmarried man; William McLean and Kelly Clark, husband and wife; Monica Scarpati and Ariel Scarpati, wife and husband; City of Phoenix, a public entity; Patrick Hanlon, an unmarried man; Nicholas French, an unmarried man.

Defendants

1. On December 15, 2011, City of Phoenix Police Officers Roberts, James, and Fiola met Marty Atencio at a 7-Eleven. *See* Roberts Dep. 25:20-24, June 26, 2013, attached hereto as **Exhibit A**.

2. When the officers arrived, they spoke with an individual who was concerned that Marty appeared to be experiencing mental health problems which were uncontrolled by medication. *See Exhibit A* at 30:13-22. A true and correct copy of the police report documenting the officers' contact with Marty is attached hereto as **Exhibit B**. The report accurately describes the officers' interaction with Marty. *See Exhibit A* at 20:4-21:12; *see also* James Dep. 15:11-17:8, April 8, 2013, attached hereto as **Exhibit C**.

3. The officers described Marty as clean-cut, wearing a nice jacket and not having any unusual odor. *See Exhibit A* at 31:24-32:12; *see also Exhibit C* at 44:20:45:7.

4. Law enforcement officers are trained to detect the signs and symptoms of those who are suspected to be under the influence of drugs or alcohol. *See Exhibit C* at 50:6-19.

5. Although the officers observed Marty acting erratically, they concluded that the cause of his behavior was mental illness, not drugs or alcohol. Marty's eyes, speech and complexion appeared normal. He was not sweating profusely or twitching. He was able to walk without trouble and was alert and responsive to questions. But he would easily become distracted and would speak of random odd things. Marty showed no signs of being a danger to himself or others, he simply acted "goofy" and appeared to be off medication. He was told to return home, which he did. *See Exhibit B* at PPDPR00004; *see also* Fiola Dep. 23:4-10, 27:6-30:14, April 17, 2013, attached hereto as **Exhibit D**; *see also Exhibit A* at 36:11-18, 44:22-47:5, 51:23-52:24, 53:8-54:9, 58:25-60:4, 61:25-62:8; *see also Exhibit C* at 43:8-10, 50:6-19, 51:11-18, 53:2-8, 55:10-56:14, 58:1-59:20, 60:4-23, 98:2-10.

6. A short time later, a woman reported that Marty was kicking an apartment door and then approached her. So the same officers were called to the apartment complex where Marty lived. *See Exhibit B* at PPDPR00002; *see also Exhibit A* at 62:17-20; 65:12-14; 66:10-17.

1 7. As with their contact with Marty at the 7-Eleven, the officers noted that Marty's
2 demeanor was inconsistent with someone who was intoxicated by drugs or alcohol. *See*
3 **Exhibit D** at 28:3-29:9, 29:25-30:14; *see also Exhibit C* at 53:13-18.

4 8. Rather, Marty appeared to be in a psychotic state consistent with a person
5 experiencing a mental crisis. Marty was easily distracted and, at one point, Marty pretended to
6 be a dog and began chasing cars. *See Exhibit A* at 99:12-15; *see also Exhibit C* at 72:13-
7 73:11, 96:6-17; *see also Exhibit D* at 26:20-23, 27:6-21, 35:13-23, 41:1-6.

8 9. Although Marty did not threaten or touch the woman who called the police, she
9 reported that he scared her. *See* Boyd Aff. ¶¶ 7, 15, attached hereto as **Exhibit E**; *see also*
10 **Exhibit A** at 68:11-18.

11 10. Therefore, the officers arrested Marty. *See Exhibit A* at 67:3-13.

12 11. While Marty was apprehensive about being arrested, he did not resist. *See*
13 **Exhibit A** at 69:9-11; 69:21-23; *see also Exhibit C* at 73:13-74:3.

14 12. After placing Marty in handcuffs, the officers searched him to make sure he did
15 not have any weapons. *See Exhibit A* at 69:24-70:18.

16 13. Although he was "carrying on" consistent with someone in a mental crisis, with
17 "a little coaxing," the officers were able to put Marty in their car. *See Exhibit C* at 74:17-
18 76:10.

19 14. Ofcs. Roberts and James drove Marty to Phoenix's Cactus Precinct. *See Exhibit*
20 **A** at 68:23-25.

21 15. When Marty arrived, he was searched, which included the removal and
22 replacement of his shoes, for the second time that day. *See Exhibit A* at 78:4-21.

23 16. Marty was not physically aggressive or combative, at any time, at the Cactus
24 Precinct. *See Exhibit C* at 87:15-19.

25 17. Marty was then turned over to a transport officer so that he could be brought, in a
26 "wagon," to Phoenix's Central Booking station. When that transfer occurred, Marty was
27 searched again; typically, his shoes would be searched during that process. *See Exhibit A* at
28 81:19-83:5; *see also Exhibit D* at 35:13-36:14.

1 18. Due to what the officers concluded was mental illness, Marty had difficulty
2 getting into the wagon. However, after about 10 minutes of talking to Marty, the officers were
3 able to successfully put him into the vehicle without incident. *See Exhibit C* at 88:21-89:23;
4 Conn Dep. 12:18-13:10, May 19, 2014, attached as **Exhibit G**.

5 19. Then, they transported Marty to the City's Central Booking station. By this time,
6 Marty had been searched three times without incident. *See Exhibit A* at 83:24-84:9.

7 20. After he arrived at Phoenix's Central Booking station, Marty was searched again.
8 And again, his shoes were removed without the need to use any unusual force. *See* Walston
9 Dep. 22:8-10, 23:7-21, May 19, 2014, attached as **Exhibit F**.

10 21. From Phoenix's Central Booking station, Marty was brought to Maricopa
11 County's Fourth Avenue Jail. *See Exhibit F* at 38:21-24.

12 22. When he arrived, Marty was turned over to Defendant Hanlon, a Phoenix Police
13 Officer who was in charge of processing Phoenix detainees through the booking process into
14 the jail. *See* Hanlon Dep. 72:23-73:17, September 9, 2013, attached as **Exhibit H**.

15 23. Ofc. Hanlon observed Marty acting strange and babbling incoherently. *See*
16 **Exhibit H** at 24:2-9.

17 24. Ofc. Hanlon knew that Marty had an altered state of mind. He observed Marty
18 having difficulty focusing on questions and displaying confused and inconsistent behavior.
19 *See Exhibit H* at 37:7-14, 38:7-18, 39:2-11, 41:13-24.

20 25. Phoenix Police Officer Legere also observed that Marty was having difficulty
21 following directions at the jail. *See* Legere Dep. 65:12-14, April 9, 2013, attached as **Exhibit**
22 **I**.

23 26. It did not appear that Marty was intentionally disobeying anyone's commands,
24 but rather that Marty appeared very confused or "lost." *See Exhibit I* at 68:24-69:3, 69:15-
25 70:21.

26 27. Marty was taken to a holding cell with other detainees. Despite being told to sit
27 on a bench, Marty kept standing up. So Ofc. Hanlon handcuffed Marty to the bench. *See*
28 **Exhibit H** at 28:4-12.

1 28. While Marty was in the holding cell, Ofc. Legere observed Marty having a
2 discussion with an empty container of peanut butter, as if it were a person. *See Exhibit I* at
3 60:24-61:5.

4 29. Phoenix Ofcs. Hanlon and French also overheard Marty's conversation with the
5 peanut butter, although Ofc. French does not remember exactly when that psychotic
6 conversation took place. *See Exhibit H* at 24:17-23, 26:9-21, 28:17-29:4; *See French Dep.*
7 30:18-31:3, August 6, 2013, attached as **Exhibit J**.

8 30. When detainees are brought to the jail, they are asked a series of questions that
9 are included in a receiving screening form. This is a tool to determine whether the detainee is
10 medically fit to be accepted into the jail. *See Exhibit I* at 49:15-50:7.

11 31. Ofc. Hanlon witnessed Marty during his receiving screening and observed that he
12 was unable to focus on questions and did not appear to give thought to his answers. *See*
13 **Exhibit H** at 38:15-18, 39:2-11, 75:7-76:3.

14 32. Maricopa County Sheriff Sergeant Weiers also observed Marty during his
15 receiving screening. According to him, Marty said "a bunch of ridiculous stuff" during the
16 process. *See Weiers Dep.* 36:23-37:3, October 23, 2013, attached as **Exhibit K**.

17 33. Marty was eventually seen by Nurse McLean. Although he performed a cursory
18 evaluation of Marty, he did not follow the standard process used to determine if a person is
19 alert and oriented. *See McLean Dep.* 61:15-20, 62:2-12, December 4, 2013, attached as
20 **Exhibit L**.

21 34. And although Marty denied that he had any intention to hurt himself, this
22 information was apparently inconsistent with a mention of suicide that Marty made during his
23 receiving screening, which was performed by a correctional health technician. *See Exhibit L*
24 at 67:11-18.

25 35. Nurse McLean asked Mental Health Professional ("MHP") Monica Scarpati to
26 evaluate Marty. *See Scarpati Dep.* 63:23-64:14, October 21, 2013, attached as **Exhibit M**.

27 36. She stood behind Marty as she "observed" him. *See Exhibit M* at 63:23-64:14;
28 *See Exhibit L* at 102:10-18.

1 37. Video of this “evaluation” shows that it lasted no more than 42 seconds; the
2 expert hired by MHP Scarpati characterized it as “very quick.” **Exhibit N** is a CD which
3 contains clips of recordings from the Maricopa County Jail. **Exhibit N, Clip 1**, shows MHP
4 Scarpati as she approaches Marty, “evaluates” him, and leaves. *See also* Cairns Dep. 86:25-
5 87:19, July 21, 2014, attached as **Exhibit O**.

6 38. This was not the first time MHP Scarpati met Marty; in 2009, he was her patient;
7 then she diagnosed him as being delusional. *See Exhibit M* at 24:11-25:4, 110:19-111:15
8 (referencing MHP Scarpati’s medical record from 2009).

9 39. However, in December of 2011, Maricopa County did not have an electronic
10 medical records system in place which would allow Nurse McLean or MHP Scarpati to timely
11 obtain Marty’s medical records during the intake process. *See Exhibit L* at 120:1-5; *see also*
12 **Exhibit M** at 97:6-12, 99:9-25.

13 40. Had MHP Scarpati had access to those records, her memory would have been
14 refreshed that Marty had previously been incarcerated and admitted to a psychiatric facility.
15 She also would have learned that Marty had a history of psychosis, delusions, and loose
16 thought, but was compliant in taking his medications. *See Exhibit M* at 108:3-11, 109:7-13,
17 100:1-4, 110:19-111:4-15, 112:6-10.

18 41. MHP Scarpati “asked [Marty] what was going on” and he did not respond
19 appropriately. She observed Marty talking in “word salad” and yelling the words “spark plug”
20 and “fire truck.” *See Exhibit M* at 64:8-14; 65:1-21.

21 42. MHP Scarpati did not ask Marty any general knowledge questions, about his
22 social, legal or criminal history, or if he was having any hallucinations or a plan to commit
23 suicide. *See Exhibit M* at 92:23-93:25

24 43. MHP Scarpati recognized that Marty was psychotic and “in crisis at the time.”
25 *See Exhibit M* at 76:11-21, 80:16-18, 87:14-16.

26 44. She also knew that, because of his mental crisis, Marty may not have had the
27 ability to make rational decisions or cooperate with her or law enforcement officers, or
28 participate in safety planning. *See Exhibit M* at 82:9-14, 129:12-130:7.

1 45. Notwithstanding MHP Scarpati's knowledge of Marty's condition, Nurse
2 McLean did not know that Marty had been previously diagnosed as mentally ill while in the
3 County's custody. Nor did he know that the County had records in its possession indicating
4 that Marty suffered from hallucinations, had a history of demonstrating bizarre behavior, and
5 took a psychiatric medication. *See Exhibit L* at 120:15-121:8.

6 46. Moreover, MHP Scarpati never told Nurse McLean that Marty was in a state of
7 psychosis. *See Exhibit L* at 57:25-58:6.

8 47. It is not unusual for MCSO officers to communicate with mental health
9 professionals when they believe the processing of an inmate may be difficult because of mental
10 health issues. *See* Weiers Dep. 74:18-75:7, October 21, 2013, attached as **Exhibit Q**.

11 48. Despite her observations of Marty, MHP Scarpati did not inform any law
12 enforcement officers of Marty's mental state or that Marty may have not had the ability to
13 cooperate with them because of his psychosis. *See Exhibit M* at 95:12-96:1, 96:2-7.

14 49. Ofc. Hatton testified that it would have been helpful to know that Marty was in a
15 state of psychosis. *See* Hatton Dep. (2) 23:14-18, January 27, 2014, attached as **Exhibit P**.

16 50. As the supervisor on scene, Sgt. Weiers testified he would have wanted to know
17 if MHP Scarpati had come to the conclusion that Marty was in a state of psychosis while he
18 was being processed through the jail. *See Exhibit Q* at 73:2-12.

19 51. Indeed, Sgt. Weiers would not have accepted Marty into the jail had he known of
20 Marty's medical condition. *See Exhibit Q* at 164:23-165:2.

21 52. This is consistent with Maricopa County's written policies which state that
22 "[a]rriving arrestee[s] with medical problems may be refused admission to [the] Jail," *see*
23 **Exhibit R**, and "[p]atients presenting at Intake with danger to self or others, or in an acute
24 mental health state, are transferred to an Acute Mental Health Housing Unit (AMHU) for
25 safety, continuous monitoring, and evaluation of appropriate treatment intervention." *See*
26 **Exhibit S**.

27 53. Despite the County's policies, their procedure is to never refuse a detainee
28 admittance into the jail based on a mental condition. *See Exhibit M* at 130:8-14; *see also*

1 Noggle Dep. 57:10 61:6, 88:12-90:5, March 31, 2014, attached as **Exhibit GG**; *see also*
2 **Exhibit HH** at 35:22-37:6; *see also Exhibit L* at 133:6-25.

3 54. MHP Scarpati and Nurse McLean consulted with each other. Thereafter, Nurse
4 McLean admitted Marty into the jail and set in motion the process to have him placed in a safe
5 cell. *See Exhibit H* at 91:15-22; *see also Exhibit M* at 77:5-19.

6 55. As with any other detainee, Marty was taken to have his mug shot taken by
7 MCSO detention officers. *See Exhibit J* at 38:9-16.

8 56. According to Ofc. Hatton, Marty was saying things that did not make any sense
9 as he was having his mug shot taken and MCSO officers were “trying to have a sense of humor
10 with him.” *See Hatton Dep.* 43:11-23, May 30, 2013, attached as **Exhibit U**.

11 57. Although Ofc. Hatton testified that the officers were laughing “with” Marty
12 rather than at him, another witness, Mathew Layman, who testified shortly after the incident,
13 remembers the situation differently:

14 Marty was then taken out of the holding tank to have his mug shot taken. While
15 Marty was having his mug shot taken, the guards were taunting him, telling him
16 to “turn left,” “turn right,” and making fun of Marty’s inability to follow
17 instructions. As the guards made fun of Marty, they encouraged him to make
funny faces and the photographer, a female detention officer, kept saying “let’s
make this one the mug shot of the week.” After they took his mug shot, the
detention officers brought Marty back to the holding tank.

18 *See Exhibit U* at 14:22-23; *see also* Layman Aff. ¶ 9, attached hereto as **Exhibit T**.

19 58. Consistent with Mr. Layman’s testimony, Ofc. French has heard MCSO
20 detention officers refer to the “mug shot of the week” or “mug shot of the day” on several
21 occasions. *See Exhibit J* at 40:2-12.

22 59. These references are to the Maricopa County Sheriff’s Office’s practice of
23 publishing detainees’ mug shots on the County’s website to enable citizens to vote on their
24 favorite one. *See Pena Dep.* 28:12-30:9, July 9, 2013, attached as **Exhibit V**; *see also Exhibit*
25 **K** at 52:25-53:7.

26 60. In response to the officers’ requests, Marty made strange faces as he was having
27 his mug shot taken. *See Exhibit H* at 43:11-23.

1 61. **Exhibit W** contains Marty's mug shots, which was circulated in the media after
2 being released by the County.

3 62. Sgt. Weiers testified that it would not surprise him if officers were laughing
4 while Marty was having his mug shot taken because "we like to have a good time while we're
5 at work and stuff." *See Exhibit Q* at 52:3-13.

6 63. Thereafter, Phoenix Ofc. Hanlon escorted Marty to a search area called the
7 LineScan Room. *See Hanlon Aff. ¶ 10, Doc. 300-2 (p. 54-59).*

8 64. Although Ofc. Hanlon testified that he kept his hands on Marty's back to guide
9 him to the LineScan Room, Mr. Layman testified:

10 A very short time after I sat down near the room with the scanner, Marty was
11 brought out of his holding tank and into the room with the scanner. The guards
12 were escorting Marty by leading him with his hands and arms bent in what
13 looked to be a very painful position. Marty said, "your making Tony angry, your
making Tony angry." Marty was telling the guards that they were hurting him.
At this point Marty looked right at me, like he was asking for help, but there was
nothing I could do.

14 *See Exhibit T* at ¶ 11-12.

15 65. Mr. Layman is the man in the hooded sweat shirt who is photographed
16 observing, with an excellent view, Ofc. Hanlon "escorting" Marty to the LineScan Room.



25 *See Doc. 300-3 (p. 2).*

26 66. Ofc. Walston, who transported Marty to the jail and was with him through the
27 officers' use of force against him in the LineScan Room, testified that Marty's demeanor was
28

1 humorous and jovial while interacting with law enforcement and that demeanor did not change.

2 *See Exhibit F* at 27:15-17, 34:11-20.

3 67. Similarly, Ofc. Legere testified that Marty was “jovial” when he was in the jail.

4 *See Exhibit I* at 68:3-8.

5 68. Officers testified that Marty was neither threatening nor aggressive while being
6 brought to the LineScan Room. *See Exhibit F* at 40:1-12; *see also Exhibit H* at 45:8-22.

7 69. Importantly during his entire time in the LineScan room, *Marty did not*: “display
8 violent or aggressive behavior” towards anyone (**Exhibit J** at 69:1-8); punch anyone (**Exhibit**
9 **F** at 44:2-11; **Exhibit H** at 49:24-50:7); strike anyone (**Exhibit EE** 49:16-19); kick anyone
10 (**Exhibit F** at 44:2-11); bite anyone (**Exhibit H** at 49:24-50:7); or spit on anyone (**Exhibit H** at
11 49:24-50:7).

12 70. After Marty entered the LineScan Room, he was fingerprinted; Ofc. Hanlon
13 removed his handcuffs. *See Exhibit J* at 51:17-52:2.

14 71. Ofc. Hanlon would not have removed Marty’s handcuffs if he believed Marty to
15 be a threat to himself or other officers. *See Exhibit H* at 46:6-9.

16 72. At that time, Ofc. Hanlon did not feel any time pressure to get Marty booked into
17 the jail. *See Exhibit H* at 69:20-70:16.

18 73. Ofc. Hanlon asked Marty to take off his shoes so they could be put through an x-
19 ray machine. Although Marty took off his right shoe, he did not immediately take off his left
20 shoe and said to Ofc. Hatton, “[y]ou can take my shoe off for me.” In response, Ofc. Hanlon
21 grabbed Marty. *See Exhibit F* at 41:1-22.

22 74. Other officers immediately joined in the use of force against Marty. The video
23 of the entire use of force in the LineScan Room is contained on **Exhibit N, Clip 2**.

24 75. Ofc. French was the first officer to join Ofc. Hanlon’s use of force against Marty.

25 76. While Ofc. French claims that he did not attempt to place Marty in a carotid
26 choke hold, *see French Aff. ¶ 13, Doc. 300-2 (p. 85-89)*, the physical evidence and video of his
27 actions show that is exactly what he did.

1 77. Ofc. French's expert, Mr. Meyer, testified at his deposition that the first two
2 pictures below demonstrate a person in the process of applying a carotid choke hold – the third
3 picture is of Ofc. French using force against Marty. Mr. Meyer "concede[d] that one of the
4 possibilities is that [Ofc. French's arm is] near his neck, around his neck, possibly compressing
5 one or both carotid arteries."



12 13 Meyer Dep. 40:12-43:25, June 6, 2014, attached as **Exhibit X**.

14 78. Mr. Meyer's expert opinion is consistent with the medical examiner's Report of
15 Autopsy, which concluded a "[h]istory of law enforcement subdual, including apparent carotid
16 chokehold" was significant to the diagnoses pertaining to Marty's death. *See* Report of
17 Autopsy p. 2, attached as **Exhibit Y**; *see also* Stano Dep. 30:11-17, November 27, 2013,
18 attached hereto as **Exhibit Z** (Q. So when you referred to an apparent carotid chokehold, were
19 you basing that purely on the bruising around the Adam's apple? A. No. Q. What other
20 evidence did you have to support that? A. The – reviewing the video as well as the statements
21 made by those involved.")

22 79. Phoenix's use of force policy prohibits the use of a carotid chokehold unless a
23 subject is engaged in "active aggression, aggravated active aggression, or who are a threat to
24 themselves or others." The policy specifically prohibits the use of this type force for
25 "[a]dministrative reasons, such as obtaining fingerprints or photographs" or if "a suspect
26 demonstrates passive resistance, such as refusing to enter a police vehicle or holding room."
27 Indeed, Phoenix's policy sets forth force options in order of degree. In other words, the policy
28 begins by addressing the lowest level of force (an officer's presence) and concludes with the

1 highest level of force (deadly force). Importantly, the carotid chokehold is listed as so
2 dangerous that it is followed only by deadly force. Put another way, Phoenix views the use of
3 chemical agents, the M26 Advanced and X26 TASER, impact weapons (baton/flashlight),
4 canines and stun-bag shotguns as a less severe uses of force than the carotid chokehold. *See*
5 Operations Order 1.5, Use of Force, attached as **Exhibit AA** (p. 2-12).

6 80. At no time as Ofc. French applied the carotid chokehold, or at any time before or
7 thereafter, was “Marty physically or verbally aggressive with the officers.” *See Exhibit T* at
8 ¶14.

9 81. Even Ofc. French’s expert concedes that, at the time it appears that Ofc. French
10 used a carotid chokehold, Marty was at most actively resisting the officers, not being actively
11 aggressive, a level of force below active aggression which is required for the employment of
12 the technique. *See Exhibit X* at 49:15-50:21.

13 82. Thereafter, MCSO Sgt. Weiers, Lieutenant Kaiser, and Detention Officers
14 Foster, Carrasco, Dominguez, and Hatton “dog piled” on top of Marty. *See Scheffner Dep.*
15 50:21-51:13, 56:21-57:1, May 13, 2014, attached as **Exhibit BB**.

16 83. Between 10 and 12 people engaged with Marty while he was on the ground. *See*
17 **Exhibit J** at 62:1-5.

18 84. Then, Sgt. Weiers used his TASER on Marty multiple times. *See Exhibit K* at
19 105:14-21.

20 85. The first time, the TASER was in probe mode. This means that two probes, or
21 fish-like hooks, deploy from the cartridge of the TASER and attached on to Marty. *See*
22 **Exhibit K** at 99:13-100:23.

23 86. The purpose for using the TASER in probe mode is to cause neuromuscular
24 incapacitation (*i.e.*, to stun a person’s muscles). *See Long Dep.* 50:18-21, February 13, 2014,
25 attached as **Exhibit CC**.

26 87. For neuromuscular incapacitation to occur, there must be a sufficient “spread”
27 between the two probes. *See Exhibit CC* at 51:18-21.

1 88. The spread between the probes that attached to Marty was not sufficient to cause
2 neuromuscular incapacitation. *See Exhibit CC* at 52:14-54:24.

3 89. However, as the photograph of the Marty's wounds produced by the hooks show,
4 Marty was tased close to his heart. *See Exhibit DD; see also Exhibit Z* at 106:1-19 (laying
5 foundation for picture and wounds being close to Marty's heart).

6 90. Sgt. Weiers was taught that he should avoid using the TASER, in probe mode,
7 close to the heart because the "heart-to-dart distance" is the key factor in whether an electronic
8 control device [*i.e.*, TASER] can affect the heart." *See Exhibit CC* at 59:1-61:20.

9 91. The remainder of the times that Sgt. Weiers tased Marty were "drive stuns."
10 When the TASER is used in drive stun mode, its purpose is to cause pain. *See Exhibit CC* at
11 50:5-17.

12 92. Sgt. Weiers was taught that he should avoid extended or prolonged drive stuns
13 because the use of the TASER causes physical and psychological stress. *See Exhibit CC* at
14 61:12-65:12.

15 93. In a training video shown to TASER instructors and users, the Chief Instructor
16 for TASER International describes how he has been able to fight through the effects of being
17 impacted by a grenade, but was unable to do so when impacted by a TASER. *See Exhibit CC*
18 at 30:12-18.

19 94. Mr. Layman testified that:

20 At least one of the officers began shocking Marty with what I think was a Taser.
21 They kept shocking him over and over again for about 2-3 minutes. Monique,
22 who told me she worked in a medical office, said, "if they tase him anymore,
they are going to kill him." Marty was screaming in pain, in a deep voice.

23 *See Exhibit T* at ¶ 16.

24 95. Although Marty may have displayed active resistance to the force being used
25 against him, he was not actively aggressive when he was tased. *See Exhibit X* at 63:13-24; *see also* ¶ 69.

27 96. Under Maricopa County Sheriff's Office Policy & Procedure GJ-30, which
28 detention officers are expected to know, active resistance is defined as "physical actions which

1 attempt to prevent an officer's control, but never attempts to harm the officer such as a subject
2 tightening up or attempting to pull away." *See Exhibit CC* at 65:16-66:16; *see also* Maricopa
3 County Sheriff's Office Policy & Procedure GJ-30, attached as **Exhibit JJ**.

4 97. MCSO officers are trained that the TASER should not be used in the jail setting
5 in cases in which the detainee is actively resisting, but not displaying active aggression. *See*
6 **Exhibit CC** at 67:6-15.

7 98. In addition to shocking Marty, Sgt. Weiers accidentally tased Ofc. Hatton. *See*
8 **Exhibit U** at 149:13-24.

9 99. Ofc. Hatton reacted by punching Marty. A video clip of Sgt. Weiers tasing
10 Marty, followed by Ofc. Hatton's punches, is contained on **Exhibit N, Clip 2**.

11 100. Ofc. Hatton has changed his story regarding these punches. When he was
12 interviewed by detectives investigating Marty's death, Ofc. Hatton said he struck Marty twice
13 in the face and once in the shoulder. At his deposition, he testified that he struck Marty once in
14 the face and twice in the shoulder. *See Exhibit P* at 21:2-12.

15 101. Ofc. Gabriel testified that he observed Ofc. Hatton beat Marty, punching him in
16 the face "pretty hard" with his fist. Ofc. Gabriel did not understand why Ofc. Hatton was using
17 this force, which he believed was "unreasonable" and "excessive," because Marty was
18 "defenseless" in the "Superman position" with his arms stretched out in front of him. *See*
19 Gabriel Dep. 54:10-55:3, 54:10-55:3, 56:5-19, 57:11-22, June 17, 2013, attached as **Exhibit**
20 **EE**.

21 102. Ofc. Salinas, who also witnessed Ofc. Hatton punching Marty, was even more
22 disturbed. He testified that Officer Hatton unreasonably punched Marty in the face pretty hard
23 with a closed fist while Marty was "defenseless:"

24 Q. Is it your belief that Detention Officer Hatton used an unreasonable
25 amount of force on Marty in the linescan room based on your training?

26 A. From what I saw at that very moment, based on my training, yes.

27 Q. Is it your belief that Detention Officer Hatton used an unreasonable
28 amount of force on Marty in the linescan room based on your on-the-job
experience?

1 A. Yes.

2 Q. Is it your belief that Detention Officer Hatton used an unreasonable
3 amount of force on Marty in the linescan room based on your observations
4 of Marty on December 16th, 2011?

5 A. Yes.

6 Q. Is it your belief that Detention Officer Hatton used an unreasonable
7 amount of force on Marty in the linescan room based on your observations
8 of Detention Officer Hatton on December 16th, 2011?

9 A. Yes.

10 Q. Is it your belief that Detention Officer Hatton used an unreasonable
11 amount of force on Marty in the linescan room based on your observations
12 of the position of Marty in relation to all of the other members of law
13 enforcement in the room?

14 A. Yes.

15 Q. Is it your belief that Detention Officer Hatton used an unreasonable
16 amount of force on Marty in the linescan room based on the totality of the
17 circumstances that you observed on December 16th, 2011?

18 A. Yes.

19 See Salinas Dep. 25:20-27:16, 29:9-32:20, January 17, 2014, attached as **Exhibit FF**.

20 103. The reason Ofc. Salinas patted Ofc. Hatton on the back was to get him to calm
21 down. *See Exhibit N, Clips 3 - 5* (MCSO detectives' interview with Ofc. Salinas).

22 104. After Marty was wrestled to the ground, tased and punched, Marty was
23 handcuffed. The most senior officer in the LineScan Room, believed Marty was "under
24 control." *See Exhibit BB* at 61:2-21.

25 105. After the officers used force on Marty, Nurse McLean entered the LineScan
26 room. While there, he failed to: (a) determine how many times Marty had been shocked by the
27 TASER, (b) take Marty's pulse, (c) listen to Marty's heart, (d) take Marty's blood pressure, (e)
28 take Marty's temperature, or (f) test Marty's eyes to observe nystagmus (a fluttering of the eye
indicative of neurological impairment). *See Exhibit L* at 92:20-23, 97:10-98:8.

29 106. Physician Assistant Cranmer was also present in the LineScan room to undertake
30 Marty's care. *See Cranmer Dep. 18:14-17, 31:23-25*, November 21, 2013, attached as **Exhibit
31 HH**.

1 107. PA Cranmer knew force had been used against Marty and that he had been
2 tased. Yet PA Cranmer failed to: (a) take Marty's pulse; (b) listen to Marty's heart; (c) take
3 Marty's temperature; (d) evaluate Marty's eyes for nystagmus; or (e) despite hearing Marty
4 make bizarre statements, attempt to evaluate Marty's mental health. *See Exhibit HH* at 44:1-
5 5; 44:18-25, 47:9-48:22, 117:6-9.

6 108. From the LineScan Room, Marty was carried, handcuffed in the "Superman
7 position," into Safe Cell 4. *See Exhibit EE* at 58:2-4; *see also Exhibit HH* at 49:10-50:1).

8 109. While in the safe cell, Marty did not strike any of the officers. *See Exhibit EE* at
9 62:2-4.

10 110. Nevertheless, while in the safe cell Ofc. Hatton delivered a knee strike to Marty.
11 In response, Ofc. Gabriel patted Ofc. Hatton on the back and called out Ofc. Hatton's name
12 because he felt it was unreasonable for him to strike Marty with his knee while in the safe cell.
13 *See Exhibit EE* at 62:12-24, 65:15-66:2.

14 111. Video showing Ofc. Hatton's knee strike, and Ofc. Gabriel's response, is
15 contained on **Exhibit N, Clip 6**.

16 112. The reason Ofc. Gabriel yelled out Ofc. Hatton's name was to "catch his
17 attention to let him know to chill out" and stop using force against Marty. *See Exhibit EE* at
18 63:19-64:2, 65:15-66:2.

19 113. Just as with Ofc. Hatton's punches in the LineScan Room, Ofc. Hatton has
20 changed his story about the knee strike in Safe Cell 4. He told detectives that he dropped his
21 "full" weight on Marty in Safe Cell 4. At his deposition, he testified that he did not drop his
22 "full" weight on Marty and used less force. *See Exhibit P* at 35:24-37:15.

23 114. Regardless, Maricopa County's use of force expert testified:

24 Q. Well, my first question is, are you able to determine whether Officer
25 Hatton's use of force in the safe cell was reasonable?

26 A. Yes.

27 Q. And then the second question, therefore, is, was Officer Hatton's use of
28 force in the safe cell reasonable?

A. It was not necessary for Office Hatton to place his weight in the way that

1 he did.
2

3 Q. Was it reasonable for him to do so?
4

5 A. No.
6

7 Gravette Dep. 56:19-57:11, July 24, 2014, attached as **Exhibit II**.
8

9 115. Detention officers stripped Marty naked and left him unconscious and alone in
10 Safe Cell 4. *See Exhibit N, Clip 6* (video of officers' interaction with Marty, in Safe Cell 4).
11

12 116. Nurse McLean stood outside of the safe cell. He could not recall any specific
13 movement of Marty in the safe cell that satisfied him Marty was medically stable and does not
14 remember Marty responding to any of the officers' attempts to speak with Marty in the safe
15 cell after he was placed in there. Nurse McLean did not do anything to assess Marty's body
16 temperature, heart rate, breathing, cognitive abilities, or blood pressure after he was placed into
17 the safe cell. *See Exhibit L* at 110:21-111:20.
18

19 117. Physician Assistant Cranmer did not perform any type of medical assessment of
20 Marty after he was placed in Safe Cell 4. *See Exhibit HH* at 101:18-20.
21

22 118. Although Physician Assistant Cranmer testified that, while watching Marty
23 through the window of the safe cell, he believed he saw Marty take a breath and move, the
24 video of the incident shows that that is not an objectively reasonable conclusion. *See Exhibit*
25 **HH** at 106:17-23; *see also Exhibit N, Clip 7* (showing a side by side view of PA Cranmer
26 observing Marty).
27

28 119. As Marty lay motionless in Safe Cell 4, MHP Scarpati danced with, and bumped
her rear-end against, an MCSO Lieutenant. *See Exhibit N, Clip 8* (showing MHP Scarpati
dancing); *see also Exhibit U* at 148:16-149:2.
29

30 120. As Marty lay motionless, Ofcs. Hatton and Hanlon laughed with each other
31 outside of the safe cell containing Marty as he died. *See Exhibit U* at 150:16-25.
32

33 121. Several minutes later, Physician Assistant Cranmer was told by a nurse that
34 Marty was not breathing. PA Cranmer responded, "Yeah he is. He's just intoxicated. He's
35 okay. They tased him. He's alright." The nurse said, "Um, no, I don't think so. He's not
36 breathing." *See Exhibit HH* at 61:20-62:12.
37

122. PA Cranmer initially told detectives that he “ran” to the safe cell. However, when shown his movements at his deposition, PA Cranmer admitted that he simply “walked briskly.” *See Exhibit HH* at 62:17-63:4. The video of his movement, attached as **Exhibit N**, **Clip 9**, shows he does not appear overly concerned at all.

123. Minutes after PA Cranmer came back to Safe Cell 4, he re-entered the cell. Nine minutes elapsed between the time that Marty was left in the safe cell and lifesaving efforts were attempted. *See Exhibit Z* at 66:18-67:14.

124. When the officers and medical personnel re-entered the safe cell, Marty did not have a pulse; he died. *Id*

125. With respect to Marty, PA Cranmer, MHP Scarpati and RN McLean each testified that they would not do anything different if they could go back in time and treat him again. *See Exhibit HH at 99:22-24; see also Exhibit M at 141:14-142:3, see also Exhibit L at 123:7-9.*

126. Similarly, Ofc. Hatton is not remorseful about any of his activities in connection with the events of December 16, 2011. *See Exhibit P* at 46:16-19.

127. Ofcs. Hanlon and French testified that they would not do anything differently if they could re-do the events of December 16, 2011. *See Exhibit H* at 72:5-10; *see also Exhibit J* at 77:1-78:4.

128. Maricopa County Chief Deputy Sheridan reviewed the allegations that Sgt. Weiers used unreasonable force against Marty and, as the final policymaker of Maricopa County, ratified Sgt. Weiers' actions. *See* Sheridan Dep. 66:2-68:16, July 22, 2014, **Exhibit KK**.

129. Deputy Chief Sheridan also ratified Ofc. Hatton's use of force against Marty in the LineScan Room. *See Exhibit KK* at 91:10-92:8.

Dated this 25th day of September, 2014.

STINSON LEONARD STREET LLP

By: s/ Larry J. Wulkan

Michael C. Manning

Michael G. Man
Larry J. Wulkan

Early J. W. Franklin
Stefan M. Palys

1850 North Cen

Phoenix, Arizona 85004-4584

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2014, I electronically filed the foregoing with the Clerk of the Court for the U.S. District Court for the District of Arizona by using the CM/ECF System. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system:

Kathleen L. Wieneke

Christina Retts

STRUCK WIENEKE & LOVE, P.L.C.

Attorneys for Defendants City of Phoenix, Patrick Hanlon, and Nicholas French

Lisa S. Wahlin

Andrew M. Kvesic

RYLEY CARLOCK & APPLEWHITE

Attorneys for Defendants Arpaio, Carrasco, Dominguez, Foster, Kaiser, Scheffner, Vazquez, and Weiers

Sarah L. Barnes, Esq.

Robert M. Moore

BROENING, WOODS & WILSON, PC

Attorney for Defendant Hatton

Gary L. Popham, Jr.

O'CONNOR & CAMPBELL, P.C.

Attorneys for Defendants Maricopa County, Cranmer, Scarpati, and McLean

By: s/ Kathleen Kaupke